

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

vs.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants,

and

COOKE AQUACULTURE PACIFIC, LLC,

Intervenor-Defendant.

No. 2:15-cv-01731

STIPULATED MOTION TO EXTEND
CERTAIN PRE-TRIAL DATES,
ESTABLISH SUMMARY JUDGMENT
BRIEFING SCHEDULE, AND STAY
TRIAL DATE AND **PROPOSED** ORDER

NOTE ON MOTION CALENDAR:
June 14, 2017

I. MOTION.

Plaintiff Wild Fish Conservancy (the "Conservancy"), Federal Defendants the United States Environmental Protection Agency ("EPA") and its Administrator and the National Marine Fisheries Service ("NMFS") and its Assistant Administrator for Fisheries (collectively, "Federal Defendants"), and Intervenor-Defendant Cooke Aquaculture Pacific, LLC ("Cooke"), hereby respectfully move the Court under Rule 6(b) for an order extending certain pre-trial deadlines by

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1 approximately 45 days and establishing a briefing schedule for cross-motions for summary
2 judgment. The Conservancy, Federal Defendants, and Cooke (collectively, the “Parties”) further
3 move the Court under LCR 7(f) for an order allowing over-length briefs on the cross-motions for
4 summary judgment. Finally, the Parties move the Court for an order staying the trial
5 commencement date and certain pre-trial dates pending the Court’s ruling on the parties’ cross-
6 motions for summary judgment. In accordance with the Court’s Standing Order for Civil Cases,
7 the Parties have conferred on this motion and jointly request the relief sought herein. *See* ECF
8 No. 43 at 2.

9 **II. BACKGROUND AND ARGUMENT.**

10 The Parties request an extension of certain deadlines because, despite diligent efforts,
11 discovery is continuing to require more time than initially anticipated. The Parties therefore
12 respectfully submit that good cause exists to extend certain pretrial dates by approximately 45
13 days. Further, the Parties anticipate that significant issues with respect to liability, and potentially
14 all liability issues, will be resolved on cross-motions for summary judgment. The Parties
15 therefore seek an order setting a briefing schedule and extending the page limit for cross-motions
16 for summary judgment on liability issues. Finally, the Parties request that the Court stay the trial
17 commencement date and certain pre-trial deadlines pending the Court’s ruling on the cross-
18 motions for summary judgment.

19 The Conservancy filed its complaint on November 4, 2015, and an amended complaint
20 on February 9, 2016. ECF Nos. 1, 18. The Federal Defendants filed their answer to the amended
21 complaint on February 23, 2016. ECF No. 23. The Court granted an unopposed motion to
22 intervene filed by Cookes’s predecessor—the owner and operator of commercial finfish

1 aquaculture facilities in Puget Sound—on February 29, 2016. ECF No. 27. The Court entered an
2 order recognizing Cooke’s name change on August 31, 2016. ECF No. 41.

3 The Court entered a scheduling order on July 20, 2016. ECF No. 38. That order required
4 that, *inter alia*, expert reports be disclosed by February 21, 2017, discovery be completed by
5 April 21, 2017, and dispositive motions be filed by May 22, 2017. *Id.* at p. 1. A bench trial was
6 scheduled for September 18, 2017.

7 On February 1, 2017, the parties submitted a joint motion to extend those dates. ECF No.
8 44. The Court granted that motion on February 8, 2017, ordering: expert witness reports due by
9 June 20, 2017; all discovery motions due by July 20, 2017; the completion of discovery by
10 August 21, 2017; dispositive motions due by September 19, 2017; motions in limine due by
11 November 27, 2017; joint pretrial statement due by December 19, 2017; the pretrial conference
12 set for January 2, 2018; and the bench trial set for January 16, 2018. ECF No. 45.

13 The Conservancy’s amended complaint alleges four claims related to the requirement that
14 EPA and NMFS consult under section 7 of the Endangered Species Act (“ESA”) on the effects to
15 ESA-listed species from EPA’s approval of certain water quality standards under the Clean
16 Water Act (“CWA”). ECF No. 18, pp. 19–21. The water quality standards at issue pertain to
17 finfish aquaculture facilities in Puget Sound. *Id.* at pp. 15–16. The factual and legal issues
18 involved in the claims and defenses are somewhat complex and discovery efforts have taken
19 longer than the Parties anticipated.

20 The Parties recognize the Court’s instruction that motions for extensions of time are
21 discouraged. *See* ECF No. 43 at 2. The Parties are making every effort to diligently complete
22 discovery in a cooperative manner, but respectfully request an extension of approximately 45-

1 days for certain discovery-related deadlines—the deadline for Rule 26(a)(2) disclosures, the
2 deadline for discovery-related motions, and the discovery completion date.

3 The Parties have conferred and believe that the most efficient manner to proceed in
4 bringing this matter to the Court for resolution is through cross-motions for summary judgment
5 on liability issues. Due to the complexity of the issues, the Parties request that the Court establish
6 a schedule and page limits to allow additional time and pages to brief these cross-motions for
7 summary judgment. As previously represented, Federal Defendants and Cooke intend to confer
8 in an effort to avoid presenting duplicative arguments to the Court. *See* ECF Nos. 28, 34. The
9 schedule proposed below facilitates those efforts by staggering Federal Defendants and Cooke's
10 briefs.

11 Because the Parties anticipate that the Court's ruling on the cross-motions for summary
12 judgment will dictate the nature of further proceedings, if any, the Parties request that the Court
13 stay the trial commencement date and certain pre-trial deadlines pending the Court's summary
14 judgment ruling.

14 **III. CONCLUSION.**

15 For the foregoing reasons, the parties respectfully move the Court for an order setting the
16 following schedule and page limitations for this case:

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1	BENCH TRIAL DATE	Stayed
2	Reports from expert witness under FRCP 26(a)(2) due	August 4, 2017
3	All motions related to discovery must be filed by and noted on the motion calendar on the third Friday thereafter (see CR7(d))	September 4, 2017
4	Discovery completed by	October 5, 2017
5	Conservancy's motion for summary judgment on liability issues, not to exceed 45 pages, due by	December 22, 2017
6	Federal Defendants' combined response to the Conservancy's motion for summary judgment on liability and cross-motion for summary judgment on liability, not to exceed 40 pages, due by	February 2, 2018
7	Cooke's combined response to the Conservancy's motion for summary judgment on liability and cross-motion for summary judgment on liability, not to exceed 25 pages, due by	February 9, 2018
8	The Conservancy's combined reply in support of its motion for summary judgment on liability and response to Federal Defendants' cross-motion for summary judgment on liability, not to exceed 30 pages, due by	March 9, 2018
9	The Conservancy's combined reply in support of its motion for summary judgment on liability and response to Cooke's cross-motion for summary judgment on liability, not to exceed 25 pages, due by	March 16, 2018
10	Federal Defendants' reply in support of their cross-motion for summary judgment on liability, not to exceed 30 pages, due by	March 30, 2018
11	Cooke's reply in support of its cross-motion for summary judgment, not to exceed 12 pages, due by	April 6, 2018
12	All motions in limine must be filed by and noted on the motion calendar no earlier than the third Friday thereafter and no later than the Friday before the pretrial conference.	Stayed
13	Joint pretrial statement	Stayed
14	Pretrial conference	Stayed

20 DATED this 14th day of June, 2017.

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1 Respectfully submitted,

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Attorneys for Intervenor-Defendant

ORDER

IT IS SO ORDERED.

Dated this 20th day of June, 2017.


HONORABLE BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on June 14, 2017, the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service upon on all Parties enrolled to receive such notice.

/s/ Trent S.W. Crable
Trent S.W. Crable

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